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July 30, 1996

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William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: WT Docket No. 96-18  
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of TSR Paging Inc. are an original and eleven (11) copies of a "Reply To Comments And Opposition To Emergency Petition For Reconsideration" submitted with respect to the above-referenced proceeding.

Should any questions arise with respect to this matter, please communicate directly with undersigned counsel.

Respectfully submitted,

*Richard S. Becker*

Richard S. Becker  
Attorney for TSR Paging Inc.

Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JUL 30 1996

In the Matter of )  
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Revision of Part 22 and )  
Part 90 of the Commission's )  
Rules to Facilitate Future )  
Development of Paging Systems )  
 )  
Implementation of Section )  
309(j) of the Communications )  
Act -- Competitive Bidding )

WT Docket No. 96-18

PP Docket No. 93-253

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

**REPLY TO COMMENTS AND OPPOSITION TO  
EMERGENCY PETITION FOR RECONSIDERATION**

TSR Paging Inc. ("TPI"), by its attorneys and pursuant to 47 C.F.R. §1.429(g), hereby replies to the "Comments And Opposition To Petitions For Reconsideration Of MobileMedia Communications, Inc." ("MobileMedia Opposition") filed by MobileMedia Communications, Inc. ("MobileMedia") on July 15, 1996.<sup>1</sup> By this Reply, TPI responds to the arguments raised in the MobileMedia Opposition relating to the issues addressed by TPI in the "Emergency Petition For Reconsideration" ("Emergency Petition") filed by TPI on May 6, 1996, with respect to the First Report and Order, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-183 (released April 23, 1996) ("First R&O") in the above-captioned proceeding.<sup>2</sup> By this Reply,

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<sup>1</sup>It is TPI's understanding that MobileMedia has amended and revised the MobileMedia Opposition to, inter alia, delete MobileMedia's specific allegations regarding TPI. It is the amended and revised MobileMedia Opposition to which TPI responds in the instant Reply.

<sup>2</sup>Petitions for reconsideration of the First R&O, including TPI's Emergency Petition, were announced in the Commission's Public Notice, Report No. 2139, released June 25, 1996, and were published in the Federal Register on June 28, 1996, 61 Fed. Reg. 33742 (1996). TPI supplemented its Emergency Petition on May 14 and May

TPI also acknowledges with gratitude the support that the Personal Communications Industry Association ("PCIA") offered for TPI's position in the Emergency Petition as demonstrated in PCIA's July 15, 1996, "Comments Of The Personal Communications Industry Association" ("PCIA Comments") filed in the above-captioned proceeding. In reply, the following is respectfully shown.

1. In its Emergency Petition, TPI demonstrated that the Commission must immediately reconsider the First R&O to make clear that TPI's frequency 929.2125 MHz<sup>3</sup> qualifies as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze<sup>4</sup>

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23, 1996, (respectively, TPI's "First Supplement" and "Second Supplement") to include in TPI's reconsideration request two Public Notices issued by the Commission pursuant to the First R&O. See note 5, infra.

<sup>3</sup>TPI demonstrated that TPI is licensed for a nationwide exclusive paging system ("TPI Nationwide System" authorized pursuant to Commission licenses collectively referred to as "TPI Nationwide System Authorization") on Private Carrier Paging ("PCP") channel 929.2125 MHz and that TPI is currently in the process of completing construction of that system pursuant to an extended implementation authorization ("Slow Growth Authorization") granted to TPI by the Commission pursuant to 47 C.F.R. §90.496 in accordance with Commission Letter 7110-162 (December 1, 1995). Emergency Petition, p.3-4.

<sup>4</sup>In its Notice Of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-52 (February 9, 1996) (hereinafter "NPRM") in the above-captioned proceeding, the Commission, inter alia, adopted a freeze ("Freeze") on acceptance of new applications for PCP and common carrier paging ("CCP") channels as of the February 8, 1996, adoption date of the NPRM (the "Adoption Date"). NPRM, ¶139. In its First R&O, the Commission modified the Freeze (the "Modified Freeze") to allow incumbent (i.e., pre-Adoption Date) CCP and PCP licensees to file applications ("Modified Freeze Applications") for additional CCP and PCP transmission sites if the applicant certifies that the proposed transmission site is within 65 kilometers (40 miles) of an authorized and operating transmission site which was licensed to the same applicant on the same channel as of the Adoption Date. First R&O, ¶26. The Commission also permitted the filing of applications ("New Post-

because it will be excluded from geographic licensing.<sup>5</sup> TPI demonstrated that emergency reconsideration of the First R&O is required because:

- In its First R&O, the Commission improperly failed to consider the arguments raised in TPI's Interim Comments and Interim Reply Comments filed with respect to the Interim Licensing Proposal proposed in the NPRM.
- The failure by the Commission to include TPI's frequency 929.2125 MHz as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze and excluded from geographic licensing is in direct violation of the Commission's own rules and decisions and the previously-articulated Commission purpose for those rules.

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Freeze Applications") by new applicants that compete with Modified Freeze Applications within a specified time frame after Public Notice of acceptance of Modified Freeze Applications. Id. The Modified Freeze was further revised by the Commission's Order On Reconsideration Of First Report And Order, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-260 (June 11, 1996) (hereinafter "Recon. Order"). The revisions adopted in the Recon. Order are not, however, relevant to the issues raised in TPI's Emergency Petition.

<sup>5</sup>Emergency Petition at 7-25. In the NPRM, the Commission made clear that CCP and PCP licensees who have obtained nationwide exclusivity on a paging channel will be permitted to file co-channel applications without regard to the Freeze. NPRM at ¶142. The Commission also promised to release a Public Notice ("PCP Nationwide Exclusive Frequency PN") listing PCP nationwide exclusive frequencies exempt from the Freeze. NPRM at ¶26. The First R&O failed to clarify whether TPI's frequency 929.2125 MHz would be considered by the Commission as a nationwide exclusive PCP frequency that is both exempt from the Freeze and excluded from geographic licensing and as of the date of TPI's Emergency Petition, the Commission still had not released the PCP Nationwide Exclusive Frequency PN. Emergency Petition at 6-7. On May 10, 1996, the Commission released the PCP Nationwide Exclusive Frequency PN, which failed to include TPI's frequency 929.2125 MHz. Simultaneously, the Commission also released Public Notice, "Wireless Telecommunications Bureau Establishes Interim Procedures For Filing Of Common Carrier And Private Carrier Paging Applications," DA 96-749 (May 10, 1996) ("Interim Procedures PN"), which established interim procedures for filing of CCP and PCP Modified Freeze Applications and New Post-Freeze Applications. In its First and Second Supplements, TPI included the PCP Nationwide Exclusive Frequency PN and the Interim Procedures PN in TPI's reconsideration request.

- The Commission's failure to identify 929.2125 MHz as a nationwide exclusive PCP frequency exempt from the Modified Freeze and excluded from geographic licensing constituted a unilateral modification of the TPI Nationwide System Authorization, which violated Section 316 of the Communications Act of 1934, as amended (the "Act"), fundamental principles of due process and the overriding public interest in rapid licensing and deployment of nationwide paging systems.
- By failing to address TPI's frequency 929.2125 MHz in the First R&O, the Commission also impermissibly treated TPI in a substantially different manner than other, similarly-situated licensees of nationwide exclusive CCP and PCP channels.

Emergency Petition at 7-25; First Supplement, p.1-7; Second Supplement, p.1-9.

2. Various parties filed comments and/or oppositions in response to the petitions for reconsideration filed by TPI and others with respect to the First R&O.<sup>6</sup> By this Reply, TPI addresses two of those filings.

3. First, in the PCIA Comments, PCIA specifically supported the position taken by TPI in the Emergency Petition. PCIA stated that:

[C]arriers have made substantial investment and planning decisions in reliance on the Commission's nationwide exclusivity rules. Now, despite having applied for nationwide exclusivity, despite having proposed construction necessary to satisfy the nationwide exclusivity thresholds, despite having been frequency coordinated on a nationwide basis, and despite having made significant, timely efforts under those construction permits, the [First R&O] appears to abruptly terminate any pending exclusivity rights. Even worse, by proposing to auction the "whitespace" surrounding these systems, the [First R&O] exposes these carriers to greenmail applications and threatens legitimate customer

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<sup>6</sup>Aside from PCIA and MobileMedia, comments were filed by Motorola, Inc. ("Motorola"), AirTouch Paging ("AirTouch"), Arch Communications Group, Inc. ("Arch") and ProNet, Inc. ("ProNet").

expectations. PCIA, and others, therefore urge the Commission to clarify or reconsider its First R&O, and grant nationwide exclusivity to those carriers who are otherwise in compliance with the rules and that, on February 8, 1996, either: (i) satisfied the construction thresholds to obtain exclusivity or (ii) had outstanding construction permits that, if completed in a timely manner, would satisfy the nationwide exclusivity thresholds.

PCIA Comments, p.6-7 (emphasis original; footnote omitted).

As demonstrated in TPI's Emergency Petition, based on TPI's Nationwide System Authorization and Slow Growth Authorization, coupled with the substantial progress that TPI has already made in completing construction of the TPI Nationwide System on 929.2125 MHz, TPI is exactly the type of carrier that is being so terribly aggrieved by the Commission's failure to include 929.2125 MHz in the First R&O and the PCP Nationwide Exclusive Frequency PN as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze because it will be excluded from geographic licensing. TPI thanks PCIA for PCIA's recognition of the validity and importance of the issues raised in TPI's Emergency Petition.<sup>7</sup>

4. MobileMedia, on the other hand, stated that:

It would be bad public policy to allow applicants who have, in some cases, done nothing but file applications, and, in any event, have failed to substantially complete construction requirements for a nationwide license to have their frequencies treated as nationwide exclusive frequencies that are exempt from the [Modified Freeze] and that will be excluded from geographic licensing.

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<sup>7</sup>It should be noted that AirTouch also supported TPI's position in the July 15, 1996, "Comments Of AirTouch Paging," p.3-4. Neither Motorola, Arch nor ProNet, the other entities that filed comments and/or oppositions with respect to petitions for reconsideration of the First R&O, addressed the nationwide exclusivity issue raised by TPI in its Emergency Petition.

MobileMedia Opposition, p.3.

5. In response to MobileMedia's position, TPI must emphasize that MobileMedia's concerns regarding "applicants who have ... done nothing but file applications, and in any event, have failed to substantial complete construction requirements" do not apply to TPI. First, TPI is not an "applicant" for a nationwide system -- TPI is the licensee of a nationwide exclusive system on the frequency 929.2125 MHz. As demonstrated in TPI's Emergency Petition, upon grant of the TPI Nationwide System Authorization that had been coordinated by PCIA as a nationwide exclusive PCP system pursuant to 47 C.F.R. §90.495(a)(3), TPI was granted nationwide exclusivity on the frequency 929.2125 MHz "at the time of initial licensing."<sup>8</sup> This exclusivity authorization included not only the right to construct and operate the transmitters identified in the TPI Nationwide System Authorization, but also the right for a specified period of time to install 929.2125 MHz transmitters throughout the United States without any co-channel authorizations being granted to any other applicant.<sup>9</sup> Moreover, based on the Commission's December 1, 1995, grant of TPI's Slow Growth Authorization, TPI's nationwide exclusivity was extended "for the duration of the construction period" and TPI still has a significant amount of time left to complete construction of the TPI Nationwide System pursuant to TPI's Slow Growth Authorization.<sup>10</sup>

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<sup>8</sup>47 C.F.R. §90.495(c); Emergency Petition at 12-16.

<sup>9</sup>47 C.F.R. §§90.495(b), (b)(3); Emergency Petition at 12-16.

<sup>10</sup>47 C.F.R. §90.496(d); Emergency Petition at 12-16.

Accordingly, TPI cannot be considered an "applicant" for the TPI Nationwide System Authorization.

6. Second, TPI has substantially completed construction of the TPI Nationwide System on 929.2125 MHz. As demonstrated in periodic progress reports submitted by TPI to the Commission in connection with TPI's Slow Growth Authorization, TPI continues to vastly exceed the construction schedule authorized in the Slow Growth Authorization. In point of fact, in its most recent April 23, 1996, progress report, TPI reported to the Commission that as a result of TPI's extraordinary construction efforts, of the original 202 transmitters authorized in the Slow Growth Authorization ("Slow Growth Transmitters"), only 94 Slow Growth Transmitters remain to be constructed. TPI will shortly file a new progress report with the Commission that will demonstrate construction of additional transmitters bringing the remaining number of Slow Growth Transmitters down to or below 71.

7. Moreover, TPI has extended its construction efforts far beyond a mere completion of the remaining Slow Growth Transmitters. For example: (1) TPI has already completed and is currently operating a total of more than 350 929.2125 MHz transmitter sites throughout the United States; (2) TPI holds authorizations for more than 150 additional 929.2125 MHz transmitter sites above and beyond the Slow Growth Transmitters and TPI intends to install these transmitters in the immediate future; and (3) TPI is prosecuting before PCIA and the Commission applications for a substantial number of additional 929.2125 MHz transmitter sites that TPI



intends to construct as soon as authorization is received. In short, TPI has, both as of the February 8, 1996, Adoption Date of the NPRM and as of the date of this Reply, substantially completed construction of the TPI Nationwide System.

8. For these reasons, TPI hereby responds to the MobileMedia Opposition. Even under the more restrictive "substantially complete" standard suggested by MobileMedia, based on TPI's status as the holder of the TPI Nationwide System Authorization and the Slow Growth Authorization, and as a result of TPI's extraordinary construction efforts, TPI's nationwide exclusive frequency 929.2125 MHz qualifies as a nationwide exclusive PCP frequency that should be exempt from the Modified Freeze because it will be excluded from geographic licensing. TPI is simply not one of the "applicants" challenged in the MobileMedia Opposition, who "had ample opportunity to construct; having failed to build out their networks to achieve nationwide licenses, they should now compete for licenses in whatever licensing scheme the Commission may adopted in this proceeding."<sup>11</sup>


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<sup>11</sup>MobileMedia Opposition at 3-4.

**WHEREFORE**, for all of the foregoing reason, TPI hereby: (1) supports the PCIA Comments in that they directly confirm TPI's arguments in its Emergency Petition; and (2) responds to the amended and revised the MobileMedia Opposition.

Respectfully submitted,

**TSR PAGING INC.**

By:   
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Date: July 30, 1996

**CERTIFICATE OF SERVICE**

I, Jeffrey E. Rummel, an attorney in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 30th day of July, 1996, caused to be sent via First Class United States mail, postage prepaid, copies of the foregoing **"REPLY TO COMMENTS AND OPPOSITION TO EMERGENCY PETITION FOR RECONSIDERATION"** to the following:

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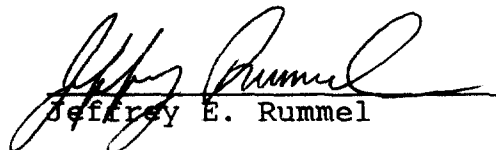
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